

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

)	Case No.:
RENEE CHANDLER,)	
)	
Plaintiff,)	
v.)	
)	
BLUESTEM BRANDS D/B/A)	JURY TRIAL DEMANDED
FINGERHUT,)	
)	
Defendant.)	

COMPLAINT

RENEE CHANDLER (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against BLUESTEM BRANDS, INC. d/b/a FINGERHUT (“DEFENDANT”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. §227.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

1 3. Defendant regularly conducts business in the State of New York,
2 thus, personal jurisdiction is established.

3 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
4

5 **PARTIES**

6 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).
7

8 6. Plaintiff is a natural person residing in Staten Island, New York
9 10303.

10 7. Defendant is a “person” as that term is defined by 47 U.S.C. §
11 153(39).

12 8. Defendant is a corporation with its principal place of business located
13 at 7075 Flying Cloud Drive, Eden Prairie, MN 55344.
14

15 9. Defendant acted through its agents, employees, officers, members,
16 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
17 representatives, and insurers.
18

19 **FACTUAL ALLEGATIONS**

20 10. Plaintiff has a cellular telephone number that she has had for at least
21 one year.

22 11. Plaintiff has only used this phone as a cellular telephone.
23

24 12. Beginning in or about May 2015 and continuing through January
25 2017, Defendant placed repeated telephone calls to Plaintiff’s cellular telephone
26

1 number.

2 13. When contacting Plaintiff, Defendant used an automatic telephone
3 dialing system, automated message and/or prerecorded voice when contacting
4 Plaintiff.
5

6 14. Plaintiff knew that Defendant was using an automated telephone
7 dialing system because the calls would begin with a recording or pre-recorded
8 voice prior to speaking to one of Defendant's representatives.
9

10 15. Plaintiff also received automated voice messages from Defendant.

11 16. Plaintiff knew Defendant was calling because she spoke to female
12 representatives who divulged their company name during their conversations.
13

14 17. Defendant's telephone calls were not made for "emergency purposes."

15 18. Desiring to stop the repeated telephone calls, Plaintiff spoke with
16 Defendant's agents to advise them that she no longer wanted to be contacted and to
17 remove her number from their list in or around May 2015.
18

19 19. Once Defendant was aware that its calls were unwanted and to stop,
20 there was no lawful purpose to continue making further calls, nor was there any
21 good faith reason to place calls.
22

23 20. However, Defendant failed to update its records to restrict telephone
24 calls to Plaintiff's cellular telephone despite Plaintiff's instruction to stop calling
25 and remove her phone number.
26

1 21. Undaunted by Plaintiff's demand to cease calling, Defendant
2 continued to call Plaintiff on her cellular telephone.

3 22. It was frustrating, annoying and distressing for Plaintiff to receive
4 such continuous and repeated telephone calls from Defendant on her cellular
5 telephone.
6

7 23. Upon information and belief, Defendant conducts business in a
8 manner which violates the TCPA.
9

10
11 **COUNT I**
12 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**
13 **PROTECTION ACT**

14 24. Plaintiff incorporates the forgoing paragraphs as though the same were
15 set forth at length herein.

16 25. Defendant initiated multiple automated telephone calls to Plaintiff's
17 cellular telephone number.
18

19 26. Defendant initiated these automated calls to Plaintiff using an
20 automatic telephone dialing system.

21 27. Defendant repeatedly placed non-emergency calls to Plaintiff's
22 cellular telephone.
23

1 28. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a
2 private cause of action in an appropriate court based on a violation of the TCPA or
3 the regulations prescribed under the TCPA to enjoin such violation.
4

5 29. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a
6 private cause of action in an appropriate court “to recover for actual monetary loss
7 from such a violation, or to receive \$500 in damages for each such violation
8 whichever is greater.”
9

10 30. Based upon the conduct of Defendant, Plaintiff avers that the
11 enhancement of damages provided for by the TCPA allowing for Plaintiff to
12 recover up to \$1,500 per call/violation be applied to calls placed.
13

14 31. Defendant’s conduct violated § 227(b)(1)(A)(iii) of the TCPA by
15 placing repeated calls using an automatic telephone dialing system to Plaintiff’s
16 cellular telephone.
17

18 32. Defendant’s calls to Plaintiff’s cellular telephone after she revoked
19 consent were not made with Plaintiff’s prior express consent.
20

21 33. Defendant’s acts as described above were done with malicious,
22 intentional, willful, reckless, wanton and negligent disregard for Plaintiff’s rights
23 under the law and with the purpose of harassing Plaintiff.
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1 34. The acts and/or omissions of Defendant were done unfairly,
2 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
3 lawful right, legal defense, legal justification or legal excuse.
4

5 35. As a result of the above violations of the TCPA, Plaintiff has suffered
6 the losses and damages as set forth above entitling Plaintiff to an award of
7 statutory, actual and trebles damages.
8

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, RENEE CHANDLER, respectfully prays for a
12 judgment as follows:
13

- 14 a. All actual damages suffered pursuant to 47 U.S.C. §
15 227(b)(3)(A);
16 b. Statutory damages of \$500.00 per violative telephone call
17 pursuant to 47 U.S.C. § 227(b)(3)(B);
18 c. Treble damages of \$1,500.00 per violative telephone call
19 pursuant to 47 U.S.C. § 227(b)(3);
20 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
21 e. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, RENEE CHANDLER, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: May 25, 2017

By: /s/ Craig Thor Kimmel
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